



## Exhibit B

U.S. Patent 7,029,547

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Patent Truth, LLC

*Relator,*

v.

Bank of America Corp.

and

Production Services Associates LLC

*Defendants.*

Civil Action No. \_\_\_\_\_

JURY TRIAL DEMANDED

**QUI TAM COMPLAINT FOR FALSE MARKING**

Relator Patent Truth, LLC ("Patent Truth"), for its Complaint against Defendants Bank of America Corp. and Production Services Associates LLC ("Defendants") alleges as follows:

**INTRODUCTION**

This is a lawsuit brought under the private attorney general provisions of the patent laws for recovery under Section 292, Title 35 of the United States Code, for penalties payable to the United States for products falsely marked as covered by United States Patents with the intent to deceive others. Unlike the vast majority of cases filed under Section 292, most of which concern only continued marking after patent expiration, Defendants here have falsely marked their sample credit cards as protected by patents whose claims have *never* covered the cards (depicted as Exhibit "A" hereto) and that are not in force. The result of Defendants' intentional actions has been to deceive others and deter them from competing or purchasing competitive products.

Title 35, United States Code, § 292 provides, in pertinent part:

(a) ...Whoever marks upon, or affixes to, or uses in advertising in connection with any unpatented article the word "patent" or any word or number importing the same is patented, for the purpose of deceiving the public; ... Shall be fined not more than \$500 for every such offense.

(b) Any person may sue for the penalty, in which event one-half shall go to the person suing and the other to the use of the United States.

The patent grant is an economically important exception to the principles of full and fair competition that protect markets, consumers, and competitors upon which the United States economy is based. The patent laws are a complex regulatory scheme that conflicts with antitrust and other laws, all of which must be balanced to protect the public. As with the antitrust laws, the United States has created a private attorney general system for the detection and enforcement of abuses of provisions of the patent laws. Here, Section 292 of the patent laws allows a litigant acting as a private attorney general to sue in *qui tam* for false marking of a product, with one half of the recovery going to the United States. As a practical matter in today's complex commerce environment, the United States has little ability to otherwise police false marking and must rely on private litigant enforcement.

For less complex products, patents on specific features or methods of manufacture may be the primary bar to competition. Defendants have engaged in a pattern and practice of distributing unembossed sample paperboard credit cards marked with a patent number referring to a method for embossing, and which patent does not now, and could never have covered these sample cards, and which was expired at the time Defendants distributed the sample cards, all in violation of Section 292 of Title 35 of the United States Code.

#### THE PARTIES

1. Relator Patent Truth, LLC is a limited liability company organized and existing under the laws of the Commonwealth of Pennsylvania, with a principal address of 429 Exton Commons, Exton, PA 19341.
2. Upon information and belief, Defendant Bank of America Corporation ("BoA") is a national banking organization organized under the laws of the United States of America and the state of Delaware, with a principal place of business at 100 N. Tryon Street, Charlotte, North Carolina 28255, who can be served through its registered agent CT Corporation System, Suite 1210, 1515 market street, Philadelphia, PA 19102.
3. Upon information and belief, Defendant Production Services Associates LLC ("PSA") is a limited liability company organized and existing under the laws of the state of Florida, with a principal place of business at 485 Half Day Road, Suite 500, Buffalo Grove, IL 60089, who can

be served through its registered agent NRAI Services Inc., 2731 Executive Park Drive, Suite 4, Weston, FL 33331.

#### **NATURE OF THE ACTION**

4. This is an action for false marking arising under 35 U.S.C. § 292 of the patent laws of the United States.

5. Patent Truth has standing to bring this action under Article III of the United States Constitution and 35 U.S.C. § 292. Under the terms of the statute, “any person” may bring an action for its enforcement. Furthermore, Patent Truth has suffered harm as a member of the public because it has suffered the deleterious economic effects caused by Defendants’ conduct that deceives the public and inhibits competition in the marketplace.

6. As set forth in detail below, Defendants have violated 35 U.S.C. § 292 (a) by falsely marking and advertising, or causing or contributing to the false marking and advertising of products that claim protection of a patent that does not now, and has never covered such products, and that is now expired for willful failure to pay the required maintenance fee established by the United States Patent and Trademark Office.

7. The expiration date of a U.S. Patent is not readily ascertainable by members of the public at the time of the product purchase. The patent number itself does not provide members of the public with the expiration date of the patent. Basic information about a patent, such as the filing, issue and priority dates associated with a particular U.S. patent number are available at, for example, the website of the United States Patent and Trademark Office (“USPTO”). However, access to the Internet is necessary to retrieve that information (meaning that a consumer may not have the ability to retrieve the information, especially when he or she is first exposed to Defendants’ marketing materials) and even after retrieving that information, the information does not include the expiration date of a patent. Rather, a member of the public must also conduct a burdensome legal analysis, requiring specific knowledge of U.S. Patent laws regarding the scope of the patent claims and the patent term expiration. Notably, a correct calculation of the expiration date must also account for at least: a) any term extensions granted by the USPTO, which may or may not be present on the face of the patent, and b) whether or not the patent owner has paid the necessary maintenance fees.

8. Defendants could have no reasonable belief that the products identified below were properly marked. Thus, the false marking was done with the intent to deceive the public by, including, but not limited to, misusing PSA's patent rights to extend the term of PSA's patents and inhibiting third party competition with both PSA and BoA, to their mutual benefit.

#### **JURISDICTION AND VENUE**

9. This Court has subject matter jurisdiction over Patent Truth's false marking claims under 28 U.S.C. §§ 1331 and 1338(a).

10. This Court has personal jurisdiction over Defendants by virtue of, *inter alia*, Defendants' persistent and continuous contacts with the Eastern District of Pennsylvania, including active and regular conduct of business during the relevant time period through maintaining bank branches in the District, and through mailing an unknown number of falsely marked products to recipients in the District.

11. This Court has personal jurisdiction over Defendants because, *inter alia*, Defendants have violated 35 U.S.C. § 292, and falsely marked, advertised, and distributed products in the Eastern District of Pennsylvania. Upon information and belief, such distributions by Defendants are substantial, continuous and systematic.

12. Venue is proper in this District under 28 U.S.C. §§ 1391(b) and (c) and 1395(a).

#### **COUNT I – FALSE PATENT MARKING**

##### **U.S. PATENT NO. 7,029,547 – INAPPLICABLE AND EXPIRED PATENT**

13. For this Count, Patent Truth repeats the allegations of Paragraphs 1-12.

14. U.S. Patent No. 7,029,547 ("the '547 patent"), entitled "Method of Embossing Cards" issued on April 18, 2006. The '547 patent is attached hereto as Exhibit B.

15. Defendants mark, and have marked products with the '547 patent number, including the sample paperboard credit card, depicted at Exhibit A.

16. Defendants cause or contribute to the marking of products with the '547 patent number, including, but not limited to, the products identified in paragraph 15.

17. The paperboard card of Exhibit A is not embossed, but rather, has an entirely smooth surface both on its front and back.

18. Claim 1 of the '547 patent requires, *inter alia*, the step of "embossing said sheet...wherein said embossing on adjacent columns is offset." Embossing is the process of raising something in relief from a surface (Merriam-Webster Dictionary, 2010.)

19. Each Claim 2 through 16 of the '547 patent depends from Claim 1, and thus, applying established patent law claim interpretation, each claim of the '547 likewise requires that embossing be a part of the method.

20. Because the paperboard card of Exhibit A is not embossed, the '547 patents claims do not cover the paperboard card, which could not have been produced by the claimed method.

21. The '547 patent is an expired patent.

22. The '547 patent expired on May 18, 2010.

23. Upon information and belief, Defendants are sophisticated companies and have many decades of experience applying for, obtaining, maintaining and litigating patents. Defendants also have experience manufacturing products and either marking or not marking them with words or numbers indicating that such products are protected by patents.

24. Defendants regularly retain sophisticated legal counsel. Upon information and belief, PSA, the assignee of the patent, (through its patent counsel, McAndrews Held & Malloy, Ltd.) received notice from the USPTO on or about November 23, 2009 that the '547 patent would expire on May 18, 2010.

25. Defendants knew or should have known that the term of the '547 patent expired on May 18, 2010.

26. Defendant BoA does not own or have a license to the '547 patent and is not paying maintenance fees to the United States Patent and Trademark Office to maintain the '547 patent. Defendant PSA has not paid maintenance fees to the United States Patent and Trademark Office to maintain the '547 patent.

27. Upon information and belief, Defendants knew or should have known that the '547 patent had already expired at the time Defendants were marking products with the '547 patent number, including the product in Exhibit A.

28. Upon information and belief, Defendants knew that they did not own or have a license to the '547 patent at the time Defendants were marking products with the '547 patent number, including the product in Exhibit A.

29. Defendants knew, or reasonably should have known, that the '547 patent did not cover the product in Exhibit A.

30. Each offense of false marking caused by Defendants has and continues to deceive the public and deter competition to the financial benefit of Defendants.

31. Defendants could have no reasonable belief that it was proper to mark products with the inapplicable and expired '547 patent number, and the false marking was done with the purpose of deceiving the public by, including, but not limited to, misusing patent rights to extend the term of the patent and inhibiting competition.

32. For at least the reasons set forth herein, Defendants have wrongfully and illegally advertised patent rights which they do not possess, and, as a result, have likely benefitted in at least maintaining market share with respect to the herein described credit card solicitation.

33. The public deception, and/or competitive harm caused by each of Defendants' false markings has and continues to harm the United States, including Patent Truth, a representative of the public incurring the cost and time associated with this enforcement.

#### **PRAYER FOR RELIEF**

WHEREFORE, pursuant to 35 U.S.C. § 292, Realtor Patent Truth respectfully requests:

A. A judgment that Defendants, and each of them, have falsely marked products in violation of 35 U.S.C. § 292;

B. An accounting of the number, sales and revenue of all falsely marked articles and derived from solicitations made using such falsely marked articles;

C. A judgment in favor of Patent Truth that Defendants have falsely marked items in violation of 35 U.S.C. § 292(a)-(b) in the form of a civil fine of \$500 per falsely marked article, one-half of any such award to be paid to the United States;

D. An Award of pre-judgment and post-judgment interest on any monetary award;



- E. An injunction prohibiting Defendants, and their officers, directors, agents, servants, employees, attorneys, licensees, successors, and assigns, and those in active concert or participation with any of them, from further violating 35 U.S.C. § 292(a);
- F. An award of attorneys fees, costs, other expenses and an enhancement of damages and penalties; and
- G. All other just and equitable relief, a the Court may determine.

**JURY DEMAND**

Patent Truth requests trial by jury on all appropriate issues.

Dated: November 3, 2010

Respectfully submitted,



Lawrence A. Husick, Esq.  
**Lipton, Weinberger & Husick**  
P.O. Box 587  
Southeastern, PA 19399-0587  
(610) 296-8259  
(610) 296-5816 (fax)  
lhusick@lwh-law.com

Lawrence A. Husick, Esq.

Counsel for Relator  
PA Bar: 38,815

ATTORNEYS FOR RELATOR PATENT TRUTH, LLC

Exhibit A



To request an actual  
Platinum Business card...  
Call the number on the front of this card  
or  
Go online to

**bankofamerica.com/newbusinesscard**



This is not a credit card or other account access device.

FC-PL-1009

U.S. Patent No. 7,629,547